

REMARKS

Reconsideration and allowance of this application in light of the foregoing amendments and accompanying remarks is respectfully requested.

THE DRAWING AMENDMENTS

FIG. 4a and FIG. 4b have been proposed to be amended (on Replacement Sheet 4/7) to illustrate the distribution component and operating rod which were described in the application as originally filed. The proposed amended FIGS. 4a and 4b show the device with the distribution component and operating rod designated by new reference numbers 5 and 51, respectively. These new numbers have been inserted in the specification by amendment thereof concurrently herewith.

In view of the specification as originally filed, it is believed that the above-discussed, proposed amendments to FIGS. 4a and 4b do not add new matter. Accordingly, approval of entry of the proposed new drawing Replacement Sheet 4/7 is respectfully requested.

THE CLAIM AMENDMENTS

Independent claims 1 and 10 have been amended to set forth, inter alia, a distribution component with an operating rod, an opening in the retainer ring for the operating rod, and definitive securement of ring and collar to the vessel neck. The dependent claims have been amended to be consistent with amended independent claim 1. New dependent claims 12 and 13 have been added. Independent claim 11 has been canceled. Claims 8 and 9 were previously withdrawn.

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THE REJECTION OF THE CLAIMS 1-7, AND 10 IS OVERCOME
AND NEW DEPENDENT CLAIMS 12 AND 13 ARE ALLOWABLE

Claims 1-3, 7, and 10-11 were rejected as being anticipated by U.S. Patent No. 2,808,954 to Smith, claims 1-7 and 10-11 were rejected as being unpatentable over the U.S. Patent No. 6,595,395 to Jourdin et al. in view of Smith, and claims 4-6 were rejected as being unpatentable over Smith in view of Jourdin et al.

Claim 11 has been canceled, and claims 1 and 10 are the only independent claims that are pending. Claims 1 and 10 have been amended herein to set forth a device that includes, inter alia, (1) a distribution component (e.g., pump or valve) which is to be maintained on a vessel neck and which has an operating rod, (2) a retainer ring with a through opening for the operating rod, and (3) definitive securement of the ring and a surrounding collar on the neck of a vessel. These features, in combination with the other features set forth in the claims, is not taught or suggested by the cited prior art.

The cited patent to Smith (U.S. Patent No. 2,808,954) teaches a tamper-indicating closure. The closure is not a device that includes a (1) distribution component (such as a pump or valve) that has an operating rod and that is to be maintained on a vessel neck as (2) a retainer ring with a skirt and a through opening for the distribution component operating rod, and (3) a collar surrounding the retainer ring skirt wherein the collar and ring are definitively secured on the vessel neck.

Further, Smith provides a plastic cap or hood 11 which is removable, and which is initially covered by a tamper-indicating shell 12 which is also removable. The shell 12 is removed by peeling away the tear-strip 23 to allow the rest of the shell 12 to be separated from

the underlying hood 11, which hood 11 can then be pulled off of the top of the container.

Smith therefore teaches a wholly removable structure which is contrary in function and form to the novel device set forth in the amended independent claims 1 and 10 in the instant application. The device that is set forth in the instant application amended independent claims 1 and 10 has the ring and collar “definitively secured” to a vessel neck. It is not possible for the consumer to ordinarily remove the outer lining collar, the inner retaining ring, or the distribution component (e.g., pump or valve).

One of ordinary skill in the art of pumps or valves would not consider looking to designs of “removable,” tamper-indicating closures. Even if consideration were given to such tamper-indicating, removable closures, the tamper-indicating removable closure taught by Smith wholly fails to disclose a number of the unique features set forth in independent claims 1 and 10.

Smith teaches away from providing a number of the claimed features, such as the distribution component with an operating rod, a ring with a through opening for the operating rod, and the definitive securement of the ring and collar on the vessel neck.

The Jourdin et al. ‘395 patent also wholly fails as an effective reference with respect to the instant application amended independent claims 1 and 10. In particular, the Jourdin et al. ‘395 patent does not teach external ribs extending over the height of the skirt of a retainer ring. The independent claims 1 and 10 of the instant application each requires, among other things, that the retainer ring have a skirt with an external wall formed with longitudinal external ribs extending axially vertically over the height of the skirt. In contrast, the Jourdin et al. ‘395 patent teaches away from such a structure. The Jourdin et al. ‘395 patent discloses, in FIG. 5, the use of

ribs 23 on an inside surface of a skirt of a ring 20. This is completely inconsistent with the structure set forth in the instant application independent claims 1 and 10.

Even if there was sufficient motivation, teaching, or suggestion to combine the teachings of the Smith '954 patent with the Jourdin et al. '395 patent teachings, or vice versa, the combination fails to suggest the present invention as claimed.

First of all, the Smith '954 patent does not relate to a device that includes, inter alia, a distribution component to be mounted on a vessel neck, and the Smith '954 patent does not relate to retainer ring structure disclosed in the Jourdin et al. '395 patent. The amended independent claims 1 and 10 in the instant application clearly set forth a device that includes a distribution component to be mounted on a vessel neck. As discussed above, the distribution component, such as a finger-actuated pump or valve, is maintained on a vessel neck, and the ring and collar are "definitively secured" on the vessel neck. The distribution component is not adapted to be, or intended to be, removed by the user.

Smith does not pertain to the technical field of the present invention or the Jourdin et al. '395 patent. The removable, tamper-indicating closure structure of the Smith '954 patent does not address, and is remote from, the problems which the assembly shown in the Jourdin et al. '395 patent is intended to overcome. Further, Smith is directed to overcoming problems that are not at all analogous to the problems faced by Jourdin et al. or the inventors of the present invention. As noted by the Court of Appeals for the Federal Circuit, in In re Oetiker, 24 U.S.P.Q. 2d 1443 (CAFC 1992), "The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention, only with the benefit of hindsight, is insufficient to

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present a prima facie case of obviousness.”

Further, as noted by the Court in Sensonics Inc. v. Aerosonic Corp., 38 U.S. P.Q. 2d 1551 (Fed. Cir. 1996), ([T]o draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction--an illogical, inappropriate process by which to determine patentability.”

In view of the above discussion, it is believed that the Smith ‘954 patent and the Jourdin et al. ‘395 patent are not properly combinable to teach or suggest the invention set forth in the amended independent claims 1 and 10 or the dependent claims 2, 3, 4, 5, 6, 7, 12, and 13. Accordingly, withdrawal of the rejection of claims 1-7, 10, 12, and 13 under 35 U.S.C. §103(a) as being unpatentable over Jourdin et al. in view of Smith, is respectfully requested.

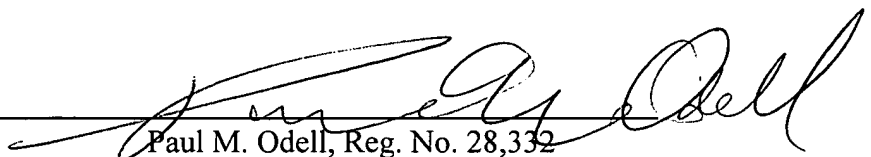
It is believed that all of the claims in the application, as amended, are now in condition for allowance, and such action is earnestly solicited.

Further, it is believed that this entire application is now in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER

By

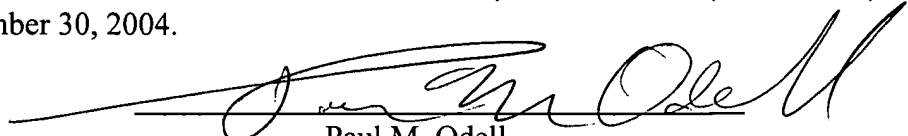

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on December 30, 2004.



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**AMENDMENTS TO THE DRAWINGS IN THE FORM OF PROPOSED NEW,
AMENDED DRAWING SHEET 4/7 SHOWING AMENDED FIGS. 4a AND 4b**

Amend the drawings by replacing the previously renumbered drawing sheet 4/7 with the enclosed new, amended, Replacement Sheet 4/7.